

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## INTEROFFICE MEMORANDUM

TO: Chief Clerk DATE: April 23, 2012

THRU: Iliana Delgado, Team Leader  
Water Rights Permitting Team

FROM: Craig Mikes, Project Manager  
Water Rights Permitting Team

SUBJECT: Bentwood C.C., L.L.C.  
Docket #2011-2288-WR  
ADJ 1290  
CN603932765, RN102729357  
Application No. 14-1290B to Amend Certificate of Adjudication No. 14-1290  
Texas Water Code §11.122  
Lake Nasworthy, South Concho River, Colorado River Basin  
Tom Green County

The Executive Director received an application from the Bentwood C.C., L.L.C. seeking to amend Certificate of Adjudication No. 14-1290 pursuant to Texas Water Code §11.122 and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, *et seq.*

The application was received on April 25, 2011. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 19, 2011. The notice of the application was filed with the Chief Clerk on October 3, 2011, and notice was subsequently mailed to the interjacent water right holders in the Colorado River Basin. A request for a contested case hearing was received.

Because this application was declared administratively complete after September 1, 1999, the rules in Chapter 55, Subchapter G, Section 55.250 - 55.256 apply. The Chief Clerk shall mail notice to the applicant, executive director, public interest counsel, and timely hearing requestors not later than 35 days prior to the agenda setting. Applicants, the public interest counsel, and the executive director shall file a response no later than 23 days before agenda, and the hearing requestors shall reply no later than nine days before agenda.

The application is now technically complete and the staff has recommended that the application be granted based on the analysis in the technical review memos.

Below is the caption for this application:

Consideration of the application by **Bentwood C.C., L.L.C.** for an amendment to Certificate of Adjudication No. 14-1290 (Amendment 14-1290B) to add a diversion point on the South Concho River, to divert water leased from the owner of Certificate of Adjudication 14-1290 for storage in two off-channel reservoirs, and to add an additional

250 acres of irrigated land in **Tom Green County**. Existing Certificate of Adjudication No. 14-1290 authorizes Jonathan Reid Stultz, et ux (Kelly Dee Stultz) to maintain an on-channel reservoir on the South Concho River and to impound therein not to exceed 50 acre-feet of water, and to divert and use not to exceed 166.4 acre-feet of water from two points located on the perimeter of the reservoir for irrigation of 94 acres in Tom Green County. The Commission will also consider requests for hearing or reconsideration, related responses and replies, and public comment. (James Aldredge, Craig Mikes)

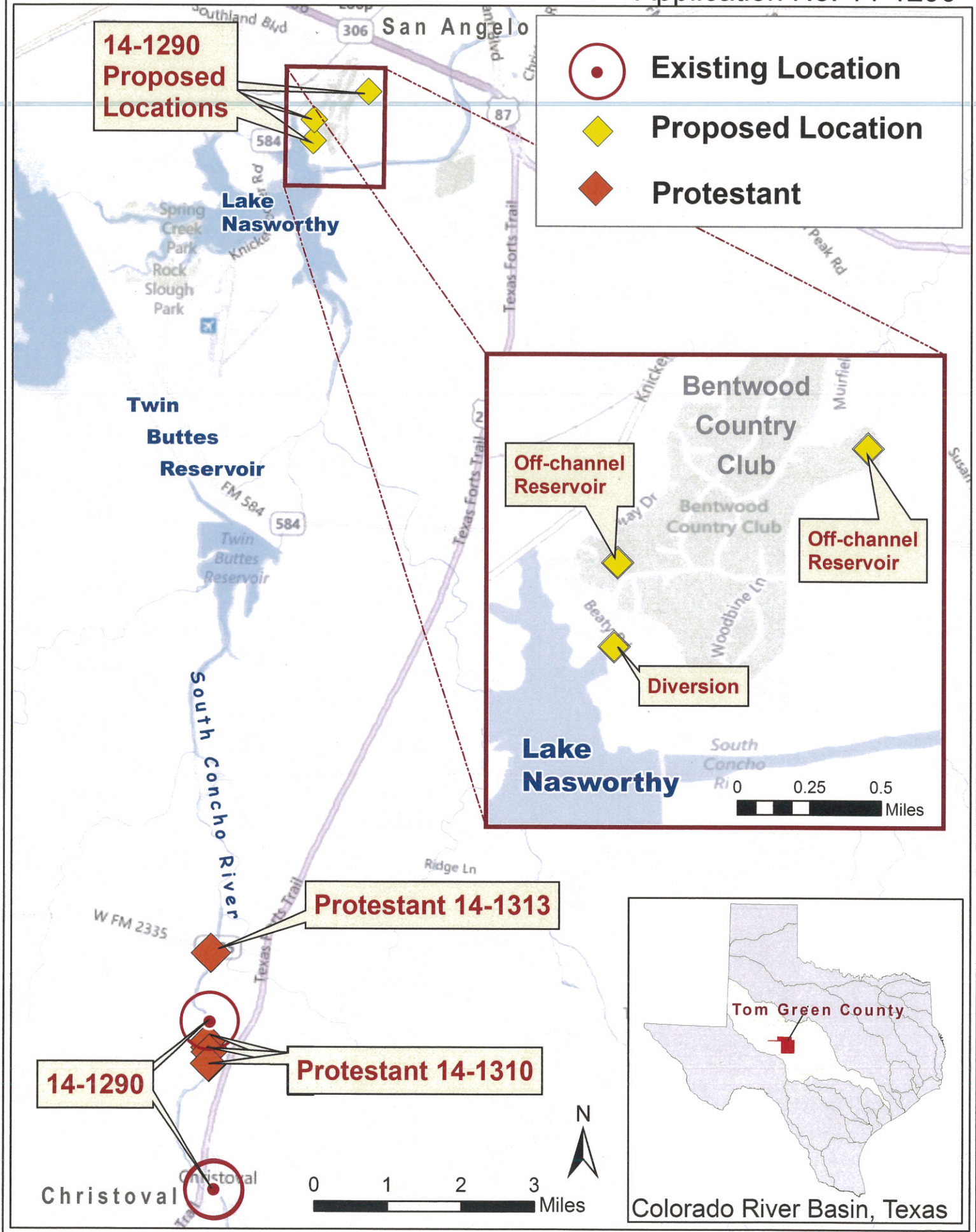
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Craig Mikes, Project Manager  
Water Rights Permitting Team

Enclosure

cc: Kellye Rila, TCEQ  
Kathy Alexander, TCEQ  
Ron Ellis, TCEQ  
James Aldredge, TCEQ  
Iliana Delgado, TCEQ  
Stephen Densmore, TCEQ  
Chris Loft, TCEQ  
Scott Swanson, TCEQ  
Leonard Oliver, TCEQ  
George Gable, TCEQ







# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## NOTICE OF WATER RIGHTS APPLICATION TO AMEND A CERTIFICATE OF ADJUDICATION

APPLICATION NO. 14-1290B

Bentwood C.C., L.L.C. seeks to amend its portion of Certificate of Adjudication No. 14-1290, pursuant to a lease, to add recreation use, to change its diversion point to a point on Lake Nasworthy, located on the South Concho River, Colorado River Basin, to add two off-channel reservoirs as part of the irrigation system, and to change the place of use to a 419.643-acre tract in Tom Green County. The Applicant does not seek to increase the diversion rate. More information on the application and how to participate in the permitting process is given below.

**APPLICATION.** Bentwood C.C., L.L.C., 2111 Clubhouse Lane, San Angelo, Texas, 76904, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Certificate of Adjudication pursuant to Texas Water Code (TWC) §11.122, and Texas Commission on Environmental Quality Rules Title 30 Texas Administrative Code (TAC) §295.1, *et seq.* Certified mailed notice is required to the 213 interjacent water right holders of record and the water right holders that share Diversion Point No. 1 in the Colorado River Basin pursuant to Title 30 TAC §295.158(c)(2)(E), which includes the co-owners of the Certificate pursuant to Title 30 TAC §295.158(c)(2)(C).

Certificate of Adjudication No. 14-1290, issued March 12, 1980, authorized the owner to maintain a dam and reservoir located on the South Concho River and impound therein not to exceed 50.0 acre-feet of water, to divert and use not to exceed 116.4 acre-feet of water per year, with a time priority of July 29, 1914, at a combined maximum rate of 15.11 cfs (6,800 gpm) from the reservoir for agricultural purposes to irrigate 94 acres of land out of a tract in Tom Green County and to divert and use not to exceed 56.0 acre-feet of water per year, with a time priority of March 12, 1964, at a maximum rate of 4.44 cfs (2,000 gpm) from a point on the South Concho River for agricultural purposes to irrigate the same 94 acres of land.

Christoval ISD acquired a 6 acre-foot portion (July 29, 1914 priority) of the Certificate and amended that portion.

The remaining 166.4 acre-feet of water is currently owned by Jonathan R. Stultz and Kelly D. Stultz.

Pursuant to a *Lease of Water Rights* between Jonathan R. Stultz and Kelly D. Stultz and Bentwood C.C., L.L.C., Bentwood C.C., L.L.C. seeks to amend the 166.4 acre-foot portion of Certificate of Adjudication No. 14-1290 to add recreation use, change the diversion point to a point on Lake Nasworthy located on the South Concho River, add two off-channel reservoirs as



part of the irrigation system, and change the place of use to a 419.643-acre tract in Tom Green County. The Applicant does not seek to increase the diversion rate.

Lake Nasworthy is owned by the City of San Angelo, authorized by Certificate of Adjudication No. 14-1319. The City has consented to Bentwood C.C., L.L.C. diverting from Lake Nasworthy.

The proposed off-channel reservoirs are described as follows:

- The South Golf Course Lake has a capacity of 2.8 acre-feet with a surface area of 1.3 acres and is located at Latitude 31.398214° N, Longitude 100.480183° W, in the Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, bearing S 19.003333° E, 6,230 feet from the northwest corner of the Gantz Original Survey, approximately 5.3 miles southwest of the City of San Angelo, Tom Green County, Texas.
- The North Golf Course Lake has a capacity of 4.0 acre-feet with a surface area of 0.9 acres and is located at Latitude 31.403699° N, Longitude 100.467411° W, in the Gantz Original Survey, bearing N 30.000278° E, 6,300 feet from the southeast corner of the Gantz Original Survey, approximately 4.36 miles southwest of the City of San Angelo, Tom Green County, Texas.

The proposed diversion point is located on Lake Nasworthy, located on the South Concho River, at Latitude 31.394122° N, Longitude 100.480352° W, bearing S 15.002778° E, 7,644 feet from the northwest corner of the Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, approximately 5.3 miles in a southwest direction from the City of San Angelo, Tom Green County, Texas. The Zip Code for the proposed diversion point and off-channel reservoirs is 76904.

Ownership of the land to be irrigated is evidenced by a Special Warranty Deed, dated July 20, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 638486 and a Special Warranty Deed, dated December 7, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 622905.

The application and required fees were received on April 25, 2011. Additional information was received on June 27, July 5, July 7, July 11, July 27, and August 8, 2011. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 19, 2011.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, a requirement that there be inflows to Lake Nasworthy prior to diversion and the maintenance of the lease agreement. The application, technical memoranda, and Executive Director's amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753.

**PUBLIC COMMENT / PUBLIC MEETING.** Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by October 27, 2011. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

**CONTESTED CASE HEARING.** The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by October 27, 2011. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the TCEQ will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**INFORMATION.** Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <http://www.tceq.state.tx.us/about/comments.html>. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.state.tx.us>.

Issued: October 10, 2011



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**DRAFT**

## AMENDMENT TO A CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 14-1290B

TYPE: 11.122

Owner:	Bentwood C.C., L.L.C.	Address:	2111 Clubhouse Lane San Angelo, Texas 76904
Filed:	August 19, 2011	Granted:	
Purpose:	Recreation and Agricultural	County:	Tom Green
Watercourse:	the South Concho River, tributary of the Concho River, tributary of the Colorado River	Watershed:	Colorado River Basin

WHEREAS, Certificate of Adjudication No. 14-1290, issued March 12, 1980, authorized the owner to maintain a dam and reservoir located on the South Concho River and impound therein not to exceed 50.0 acre-feet of water, to divert and use not to exceed 116.4 acre-feet of water per year, with a time priority of July 29, 1914, at a combined maximum rate of 15.11 cfs (6,800 gpm) from the reservoir for agricultural purposes to irrigate 94 acres of land out of a tract in Tom Green County and to divert and use not to exceed 56.0 acre-feet of water per year, with a time priority of March 12, 1964, at a maximum rate of 4.44 cfs (2,000 gpm) from a point on the South Concho River for agricultural purposes to irrigate the same 94 acres of land; and

WHEREAS, Christoval ISD acquired a 6 acre-foot portion (July 29, 1914 priority) of the Certificate and amended that portion; and

WHEREAS, the remaining 166.4 acre-feet of water is currently owned by Jonathan R. Stultz and Kelly D. Stultz; and

WHEREAS, pursuant to a *Lease of Water Rights* between Jonathan R. Stultz and Kelly D. Stultz and Bentwood C.C., L.L.C. (Applicant), the applicant seeks to amend its portion of Certificate of Adjudication No. 14-1290 to add recreation use, change its diversion point to a point on Lake Nasworthy, South Concho River, add two off-channel reservoirs as part of the irrigation system, and change the place of use to irrigate 250 acres out of a 419.643-acre tract in Tom Green County, but does not seek to increase the diversion rate; and

WHEREAS, Lake Nasworthy is owned by the City of San Angelo, authorized by Certificate of Adjudication No. 14-1319. The City has consented to Bentwood C.C., L.L.C. diverting from Lake Nasworthy; and

WHEREAS, the proposed off-channel reservoirs are described as follows:

- The South Golf Course Lake has a capacity of 2.8 acre-feet with a surface area of 1.3 acres and is located at Latitude 31.398214° N, Longitude 100.480183° W, in the Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, bearing S 19.003333° E, 6,230 feet from the northwest corner of the Gantz Original Survey, approximately 5.3 miles southwest of the City of San Angelo, Tom Green County, Texas.
- The North Golf Course Lake has a capacity of 4.0 acre-feet with a surface area of 0.9 acres and is located at Latitude 31.403699° N, Longitude 100.467411° W, in the Gantz Original Survey, bearing N 30.000278° E, 6,300 feet from the southeast corner of the Gantz Original Survey, approximately 4.36 miles southwest of the City of San Angelo, Tom Green County, Texas; and

WHEREAS, the proposed diversion point is located on Lake Nasworthy, located on the South Concho River, at Latitude 31.394122° N, Longitude 100.480352° W, bearing S 15.002778° E, 7,644 feet from the northwest corner of the Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, approximately 5.3 miles in a southwest direction from the City of San Angelo, Tom Green County, Texas; and

WHEREAS, ownership of the land to be irrigated is evidenced by a Special Warranty Deed, dated July 20, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 638486 and a Special Warranty Deed, dated December 7, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 622905; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, this amendment, if granted, is subject to requirements and orders of the Concho Watermaster; and

WHEREAS, the Executive Director recommends that special conditions be included; and

WHEREAS, no requests for a contested case hearing were received for this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 14-1290, designated Certificate of Adjudication No. 14-1290B, is issued to Bentwood C.C., L.L.C., subject to the following terms and conditions:

1. USE

Pursuant to a *Lease of Water Rights* between Jonathan R. Stultz and Kelly D. Stultz and Bentwood C.C., L.L.C., Owner is now authorized to divert not to exceed 166.4 acre-feet of water for storage in two off-channel reservoirs (South and North Golf Course Lakes) for recreation purposes and for subsequent diversion and use for agricultural purposes to irrigate 250 acres out of a 419.643-acre tract in Tom Green County.



Ownership of the land to be irrigated is evidenced by a Special Warranty Deed, dated July 20, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 638486 and a Special Warranty Deed, dated December 7, 2006, and filed with the Office of the County Clerk in Tom Green County as Instrument No. 622905.

## 2. DIVERSION

Pursuant to a *Lease of Water Rights* between Jonathan R. Stultz and Kelly D. Stultz and Bentwood C.C., L.L.C.:

- A. Owner is authorized to divert from a point on Lake Nasworthy, located on the South Concho River, at Latitude 31.394122° N, Longitude 100.480352° W, S 15.002778° E, 7,644 feet from the northwest corner of the Heinrich F. Gantz Original Survey No. 179, Abstract No. 231, approximately 5.3 miles in a southwest direction from the City of San Angelo, Tom Green County, Texas.
- B. Owner is authorized to divert the first 110.4 acre-feet of water per year at a combined maximum rate of 15.11 cfs (6,800 gpm).
- C. Owner is authorized to divert the remaining 56.0 acre-feet of water per year at a maximum rate of 4.44 cfs (2,000 gpm).

## 3. PRIORITY DATE

- A. The time priority for the right to divert and use the first 110.4 acre-feet of water per year from the diversion point authorized by this amendment is July 29, 1914, except that it is junior in priority to the interjacent water right holders of record between the two previous diversion points (Diversion Point Nos. 1 and 2) and the diversion point authorized by this amendment as they existed on the filing date of this amendment, August 19, 2011. Such interjacent owners include all water rights that share Diversion Point No. 1.
- B. The time priority for the right to divert and use the remaining 56.0 acre-feet of water per year from the diversion point authorized by this amendment is March 12, 1964, except that it is junior in priority to the interjacent water right holders of record between the previous diversion point (Diversion Point No. 2) and the diversion point authorized by this amendment as they existed on the filing date of this amendment, August 19, 2011.

## 4. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

## 5. SPECIAL CONDITIONS

- A. Owner shall only divert the 166.4 acre-feet of water per year at the downstream diversion point authorized by this amendment when there are inflows to Lake Nasworthy. This amendment does not authorize the diversion of stored water from Lake Nasworthy.
- B. Owner shall divert at the downstream diversion point authorized by this amendment only that portion of the 166.4 acre-feet of water that would have been available at the existing upstream diversion points as determined by the Concho Watermaster.
- C. The authorizations described in Paragraph 1. USE and Paragraph 2. DIVERSION are subject to the continued maintenance of the water supply agreement between Jonathan R. Stultz and Kelly D. Stultz and Bentwood C.C., L.L.C. Diversions under this amendment are subject to the continued maintenance of the agreement, as such agreement may be extended or amended from time to time. Should the agreement be amended in a manner that changes the amount of water, or the diversion rate, type or location of use of water allowed by Bentwood C.C., L.L.C. under the contract, Owner shall submit an application to amend this certificate to conform to the terms of the amended agreement. Upon expiration of the agreement, diversion of water pursuant to Paragraph 1. USE and Paragraph 2. DIVERSION shall cease and Owner shall either apply to amend the certificate with a new contract, or voluntarily forfeit the amendment. Owner shall notify the Commission immediately upon amendment or expiration of the agreement and provide the Commission with copies of appropriate documents effectuating such changes.
- D. Owner shall contact the Concho Watermaster prior to diversion of water authorized by this amendment.

This amendment is issued subject to all terms, conditions, and provisions contained in Certificate No. 14-1290, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Colorado River Basin.

Owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State resources exercised by the Commission.

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For the Commission

Date Issued:





**Texas Commission on Environmental Quality**

**INTEROFFICE MEMORANDUM**

To: Craig Mikes, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting & Availability Section

Date: August, 31, 2011

Through:  Kathy Alexander, Technical Specialist  
Water Rights Permitting & Availability Section

 Stephen Densmore, Team Leader  
Surface Water Availability & Interstate Compacts Team

From: Leonard Oliver, Hydrologist  
Surface Water Availability & Interstate Compacts Team

Subject: Bentwood C.C., L.L.C.  
ADJ1290  
CN 603932765  
Concho, Colorado River Basin  
Tom Green County

**WATER AVAILABILITY REVIEW**

**Application Summary**

A portion of Certificate 14-1290 authorizes Jonathan Reid Stultz, et ux to divert and use 110.4 acre-feet of water per year, with a priority date of July 19, 1914, from a point (Diversion Point No. 1) on an authorized reservoir at a combined maximum diversion rate of 15.11 cfs (6,800 gpm) for agricultural purposes in Tom Green County. The owners are further authorized to divert and use 56 acre-feet of water per year, with a priority date of March 12, 1964, from a point on the South Concho River (Diversion Point No. 2) at a maximum diversion rate of 4.44 cfs (2,000 gpm) for agricultural purposes in Tom Green County.

Pursuant to an agreement with Jonathan Reid Stultz, et ux, Bentwood C.C., L.L.C. seeks to amend the certificate to add a downstream diversion point on Lake Nasworthy, located on the South Concho River, to divert the 166.4 acre-feet of leased water for storage in two off-channel reservoir for recreational purposes and for subsequent diversion for agricultural (irrigation) purposes, and also seeks to add an additional place of use in Tom Green County.

The application was declared administratively complete on August 19, 2011.

### **No Injury Analysis**

The requests to add an additional place of use and storage of the water in off-channel reservoirs do not require water availability analyses because these are not requests for a new appropriation of water. These requests also do not affect other water right holders because the amount of water diverted from the stream will not change.

The request for the addition of a downstream diversion point does not require a water availability analysis because the application does not request a new appropriation of water. However, the application must be reviewed to ensure that no water rights are affected by the requested change in diversion point. Resource Protection staff did not recommend an instream flow requirement for the application.

The Water Rights Analysis Package (WRAP) simulates management of the water resources of a river basin. TCEQ uses WRAP in the evaluation of water right permit applications using priority-based water allocations. WRAP is a generalized simulation model for application to any river basin, and input datasets must be developed for the particular river basin of concern. The TCEQ developed water availability models (WAMs) for Texas' river basins that include geographical information, water right information, naturalized flows, evaporation rates, and specific management assumptions. Hydrology staff utilizes WRAP to evaluate water rights applications to determine water availability and to ensure that senior water rights are protected.

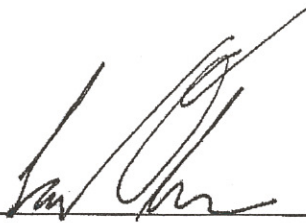
Staff modeled the application using the Full Authorization simulation of the Colorado River WAM. The period of record for the Colorado WAM is 1940 to 1998. Staff compared the pre- and post- application volume reliabilities of basin water rights and found that six water rights were negatively affected as a result of this application, although the impact was minimal. The average impact was 0.02 percent. Staff believes this application does not constitute an impact on other basin water rights, because pursuant to 30 TAC §297.45, the amendment is subordinate to interjacent water rights. In particular, this amendment will be junior in time priority to those water right owners who share Diversion Point 1. In addition, any amendment granted will be included in the City of San Angelo Water Rights Accounting Plan to ensure that stored water will not be taken, additional special conditions are included and diversions will be subject to the requirements and orders of the Concho Watermaster. These special conditions should mitigate any impacts on other water rights, should any be determined to exist.

### **Conclusion**

Staff can recommend granting the application if the amendment contains the following special conditions. Note the amendment is subject to the requirements and orders of the Concho Watermaster.



1. Owner shall only divert the 166.4 acre-feet of water per year at the downstream diversion point authorized by this amendment when there are inflows to Lake Nasworthy. This amendment does not authorize the diversion of stored water from Lake Nasworthy.
2. Owner shall only divert at the downstream diversion point authorized by this amendment that portion of the 166.4 acre-feet of water that would have been available at the existing upstream diversion points as determined by the Concho Watermaster.
3. The authorizations described in Paragraph 1. DIVERSION AND USE are subject to the continued maintenance of the water supply agreement between Owner and Bentwood C.C., L.L.C. Diversions under this amendment are subject to the continued maintenance of the agreement, as such agreement may be extended or amended from time to time. Should the agreement be amended in a manner that changes the amount of water, or the diversion rate, type or location of use of water allowed by Bentwood C.C., L.L.C. under the contract, Owner shall submit an application to amend this certificate to conform to the terms of the amended agreement. Upon expiration of the agreement, diversion of water pursuant to Paragraph 1. DIVERSION AND USE shall cease and Owner shall either apply to amend the certificate with a new contract, or voluntarily forfeit the amendment. Owner shall notify the Commission immediately upon amendment or expiration of the agreement and provide the Commission with copies of appropriate documents effectuating such changes.



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Leonard Oliver, Hydrologist

## HYDROLOGY UNIT ANALYSIS FACT SHEET

Applicant: Bentwood C.C., L.L.C. Basin: Colorado River Basin  
Water Right: 14-1290 County: Tom Green  
Stream: Colorado River Drainage Area: 2657.319 sq. miles  
Requested Amount: 166.4 acft

Changes to RUN 3 :

Changes to \*.DAT file:

\*\* BENTWOOD

\*\*WRC20660 56.0 IRR-C19640312

61401290002 6140129061290002

\*\*WRC30010 116.4 IRR-C19140729

61401290003 6140129061290003

\*\*WSC30010 50.0 0.911 0.695

WRC20260 56.0 IRR-C19640312

61401290002 6140129061290002

WRC20260 110.4 IRR-C19140729


61401290003 6140129061290003

WRC30010 6.0 IRR-C19140729

61401290004 6140129061290003

WSC30010 50.0 0.911 0.695

Remarks: Resource Protection Staff did not recommend streamflow restrictions for this application.

  
Leonard Oliver, Hydrologist

8/31/2011  
Date



# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

To: Craig Mikes, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting & Availability Section

Date: August 25, 2011

Through: *CL* Chris Loft, Team Leader  
*8/25/11* Resource Protection Team  
Water Rights Permitting & Availability Section

*GE* Gregg Easley, Aquatic Scientist  
*8/25/11* Resource Protection Team  
Water Rights Permitting & Availability Section

From: *Gmikes* George Gable, Aquatic Scientist  
*8/25/11* Resource Protection Team  
Water Rights Permitting & Availability Section

Subject: Bentwood C.C., L.L.C.  
ADJ 1290  
CN603932765  
Application No. 14-1290B to Amend Certificate of Adjudication No. 14-1290  
Lake Nasworthy tributary of the Concho River  
Tom Green County

Environmental reviews of water right applications are conducted in accordance with §11.042, §11.147, §11.1491, §11.150, and §11.152 of the Texas Water Code and with TCEQ administrative rules which include Title 30 Texas Administrative Code §297.53 through §297.56. These statutes and rules require the TCEQ to consider the possible impacts of the granting of a water right on fish and wildlife habitat, water quality, and instream uses associated with the affected body of water. Possible impacts to bays and estuaries are also addressed.

### ENVIRONMENTAL ANALYSIS

**Application Summary:** A portion of Certificate of Adjudication No. 14-1290 authorizes Jonathan Reid Stultz, et ux, to divert and use not to exceed 110.4 acre-feet of water per year from a point (Diversion Point No. 1) on an authorized reservoir at a combined maximum diversion rate of 15.11 cfs (6,800 gpm) for agricultural purposes to irrigate 58 acres of land out of a tract located in Tom Green County. The owners are further authorized to divert and use not to exceed 56 acre-feet of water per year, with a priority date of March 12, 1964, from a point on the South Concho River (Diversion Point No. 2) at a maximum diversion rate of 4.44 cfs (2,000 gpm) for agricultural purposes to irrigate 36 acres of land out of a tract located in Tom Green County.



Pursuant to an agreement with Jonathan Reid Stultz, et ux, Bentwood C.C., L.L.C (Applicant), seeks to amend Certificate No. 14-1290 by adding a downstream diversion point on Lake Nasworthy, located on the South Concho River, to divert the leased water for storage in two off-channel reservoirs for recreational purposes and for subsequent diversion for agricultural purposes on an additional tract of land located in Tom Green County.

### INSTREAM USES

**Aquatic and Riparian Habitats:** According to the *Handbook of Texas Online* the South Concho River rises one-half mile east of U.S. Highway 277 in central Schleicher County and flows north 36 miles through Twin Buttes Reservoir and Lake Nasworthy to its confluence with the North Concho River. Lake Nasworthy is relatively shallow with a surface area of 1,380 acres and a storage capacity of 10,108 acre-feet at a normal pool elevation of 1872.2 feet MSL (TPWD 2011 and TWDB 2003).

The South Concho River and Lake Nasworthy are located in the Red Prairie ecoregion of the Central Great Plains and Semiarid Edwards Plateau ecoregion of the Edwards Plateau. Soils are dark and calcareous stony clays and loams, dark brown to red-brown calcareous sandy clays and loams, and red-brown to gray-brown sandy and clay loams, caliche beds, and exposed Cretaceous limestone and Permian sedimentary rocks. Vegetation types identified in these ecoregions include: water-tolerant hardwoods, *Prosopis glandulosa*, *Hilaria belangeri*, *Juniperus ashei*, *Quercus fusiformis*, *Zizyphus obtusifolia*, *Agave lechuguilla*, *Dasyllirion* spp., *Juniperus pinchotii*, *Schizachyrium scoparium*, *Nassella leucotricha*, *Tridens albescens*, *Eriochloa sericea*, and *Bouteloua curtipendula* (*Handbook of Texas Online* and Griffith et al. 2004).

The South Concho River supports 89 indigenous and eight introduced fish species (TSU 2010). Studies on the South Concho River identified 16 species fish including: *Campostoma anomalum*, *Cyprinella venusta*, *Dionda argentosa*, *Etheostoma lepidum*, *E. spectabile*, *Gambusia affinis*, *Ictalurus punctatus*, *Lepomis auritus*, *L. gulosus*, *L. macrochirus*, *L. megalotis*, *L. microlophus*, *Micropterus punctulatus*, *M. salmoides*, *M. treculi*, and *Notropis amabilis* (Hoeinghaus et al. 2006). Lake Nasworthy provides habitat for numerous species of fish with *Dorosoma cepedianum*, *Morone* spp., *Ictalurus punctatus*, *Cyprinus carpio*, *Carpiodes carpio*, *Lepisosteus osseus*, *Lepomis macrochirus*, *L. megalotis*, and *Micropterus salmoides* being dominant (TPWD 2006). According to the Texas Parks and Wildlife's *Annotated List of Rare Species* there are four state threatened invertebrate species with potential or known presence in Tom Green County: the false spike mussel (*Quadrula mitchelli*), Texas fatmucket (*Lampsilis bracteata*), Texas fawnsfoot (*Truncilla macrodon*), and Texas.

The applicant has acquired a portion Certificate No. 14-1290 and seeks a downstream diversion point move and is not requesting a new appropriation of state water therefore; the proposed diversion of 110.4 acre-feet of water per year should not adversely impact aquatic and riparian habitats in Lake Nasworthy or the South Concho River downstream of the applicants proposed diversion point. To minimize the entrainment or impingement of aquatic organisms the applicant has indicated that screens with a mesh



size of less than 0.25 inches and a pump with a flow through velocity less than 0.5 feet per second currently exist for use by the applicant.

**Recreational Uses:** According to the Texas Parks and Wildlife Department, activities available at Lake Nasworthy include picnicking, nature study, fishing, boating, water skiing, swimming, wildlife observation, and camping (TPWD 2009). According to *An Analysis of Texas Waterways* (TPWD 1979), when Lake Nasworthy Dam is releasing water, the South Concho River is suitable for recreational use from the dam to Bell Street City Park in San Angelo, where it joins the North Fork and forms the main Concho River. The proposed diversion of 166.4 acre-feet of water per year should not adversely affect recreational uses in Lake Nasworthy or the South Concho River downstream of the applicant's proposed diversion point.

**Water Quality:** Based on the *Atlas of Texas Surface Waters* (TCEQ 2004), Lake Nasworthy is designated as Segment 1422. According to the *Texas Surface Water Quality Standards* (TCEQ 2010), designated uses for Segment No. 1422 include primary contact recreation, high aquatic life use, and public water supply. According to the *Texas Water Quality Inventory and 303(d) List* (TCEQ 2008), all uses are fully supported for Segment No. 1422. The proposed diversion of 166.4 acre-feet of water per year should not adversely affect water quality in Lake Nasworthy or the South Concho River downstream of the applicants proposed diversion point.

**Bay and Estuary Freshwater Inflows:** Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed project is located greater than 200 river miles from the Gulf of Mexico. As an individual event, the addition of a downstream diversion point should have minimal impact on bay and estuary freshwater inflow. However, the cumulative effects of all diversions and impoundments in the Colorado River Basin and its receiving waters of Matagorda Bay and the Gulf of Mexico are unknown at this time.

## SUMMARY

A portion of Certificate of Adjudication No. 14-1290 authorizes Jonathan Reid Stultz, et ux to divert and use not to exceed 110.4 acre-feet of water per year, from a point (Diversion Point No. 1) on an authorized reservoir at a combined maximum diversion rate of 15.11 cfs (6,800 gpm) for agricultural purposes to irrigate 58 acres of land out of a tract located in Tom Green County. The owners are further authorized to divert and use not to exceed 56 acre-feet of water per year, with a priority date of March 12, 1964, from a point on the South Concho River (Diversion Point No. 2) at a maximum diversion rate of 4.44 cfs (2,000 gpm) for agricultural purposes to irrigate 36 acres of land out of a tract located in Tom Green County.

Pursuant to an agreement with Jonathan Reid Stultz, et ux, Bentwood C.C., L.L.C (Applicant), seeks to amend Certificate No. 14-1290 by adding a downstream diversion point on Lake Nasworthy, located on the South Concho River, to divert the leased water for storage in two off-channel reservoirs for recreational purposes and for subsequent



diversion for agricultural purposes on an additional tract of land located in Tom Green County.

**Resource Protection staff has no recommendations for this amendment.**

This instream use assessment was conducted using current TCEQ operation procedures and policies and available data and information. Authorizations granted to the permittee by the water rights permit shall comply with all rules of the Texas Commission on Environmental Quality, and other applicable State and Federal authorizations.

**LITERATURE CITED**

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# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Craig Mikes, Project Manager  
Water Rights Permitting Team  
Water Supply Division

**Date:** August 25, 2011

**Thru:** *OL*  
*8/23/11* Chris Loft, Team Leader  
Resource Protection Team  
Water Supply Division

*KW*  
*8/25/11* Kristin Wang, Senior Water Conservation Specialist  
Resource Protection Team  
Water Supply Division

**From:** *ESS*  
*8/23/11* E. Scott Swanson, Senior Water Conservation Specialist  
Resource Protection Team  
Water Supply Division

**Subject:** Bentwood C.C., L.L.C.  
ADJ 1290  
CN603932765  
Application No. 14-1290B to Amend Certificate of Adjudication No. 14-1290  
Water Conservation Review

A portion of Certificate No. 14-1290 authorizes Jonathan Reid Stultz, et ux to divert and use not to exceed 110.4 acre-feet of water per year, with a priority date of July 19, 1914, from a point (Diversion Point No. 1) on an authorized reservoir at a combined maximum diversion rate of 15.11 cfs (6,800 gpm) for agricultural purposes to irrigate 58 acres of land out of a tract located in Tom Green County. The owners are further authorized to divert and use not to exceed 56 acre-feet of water per year from a point on the South Concho River (Diversion Point No. 2) at a maximum diversion rate of 4.44 cfs (2,000 gpm) for agricultural purposes to irrigate 36 acres of land out of a tract located in Tom Green County.

Pursuant to an agreement with Jonathan Reid Stultz, et ux, Bentwood C.C., L.L.C. seeks to amend Certificate No. 14-290 by adding a downstream diversion point on Lake Nasworthy, located on the South Concho River, to divert the leased water for storage into two off-channel reservoirs for recreational purposes and for subsequent diversion for agricultural purposes and also seeks to add an additional place of use in Tom Green County.



Per Title 30 TAC Ch. 295.9 (4)(C), an application to change the place of use of the appropriation requires the submittal of a water conservation plan.

The water conservation plan for Bentwood C.C., L.L.C. was reviewed by TCEQ staff and found to be administratively complete per Title 30 TAC Ch. 288.4.

The application is consistent with the approved January 2011 Region K Water Plan and the approved 2007 State Water Plan because there is nothing in the plans that conflicts with issuing this amendment.

The following water conservation language should be included in the amendment:

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

AMENDMENT TO  
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 14-1290A

PRIORITY: AMENDMENT

Name:	Chistoval Independent School District	Address:	PO BX 163 Christoval TX 76935
Filed:	June 27, 1991	Granted:	September 18, 1991
Purpose:	Irrigation	County:	Tom Green
Watercourse:	South Concho River, tributary of the Concho River, tributary of the Colorado River	Watershed:	Colorado River Basin

WHEREAS, Certificate of Adjudication No. 14-1290 was issued to C. L. McMillan on March 12, 1980 and authorized owner the right to maintain an existing dam and 50 acre-foot reservoir on the South Concho River and the diversion and use of not to exceed 116.4 acre-feet of water per annum from the reservoir at a maximum rate of 15.11 cfs to irrigate 58 acres of land out of a 76.25-acre tract; and

WHEREAS, the time priority of the right to divert from the aforesaid reservoir under Certificate No. 14-1290 is July 29, 1914; and

WHEREAS, the aforesaid reservoir, diversion point and diversion rate is authorized in combination with Certificate Nos. 14-1280, 14-1281, 14-1282, 14-1283, 14-1284, 14-1285, 14-1286, 14-1287, 14-1288, 14-1289, 14-1291, 14-1292, 14-1293, 14-1294, 14-1295, 14-1296, 14-1297, 14-1298, 14-1299, 14-1300, 14-1301, 14-1302, 14-1303, 14-1314, 14-1403 and 14-1404;

WHEREAS, applicant has acquired ownership of six acre-feet of water rights under Certificate No. 14-1290 as evidenced by a Transfer, Assignment and Water Deed recorded in Volume 249, page 49 of the Official Public Records of Real Property of Tom Green County; and

WHEREAS, applicant has requested that Certificate No. 14-1290 be amended to authorize applicant to utilize the six acre-feet of water to irrigate two acres of land out of a 58.299-acre tract owned by Tom Green County and to establish a diversion point on the perimeter of said reservoir; and



WHEREAS, on August 12, 1985, applicant entered into a 99-year contract with the county for use of said tract as evidenced by Lease Agreement recorded in Volume 838, page 140 of the Deed Records of Tom Green County; and

WHEREAS, the Texas Water Commission finds that jurisdiction over the application is established; and

WHEREAS, no person protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Water Commission in issuing this amendment; and

NOW, THEREFORE, this amendment to Certificate No. 14-1290 is issued to Christoval Independent School District, subject to the following terms and conditions:

1. USE

Owner, Christoval Independent School District, is authorized to divert and use not to exceed six acre-feet of water per annum from the aforesaid reservoir to irrigate two acres out of a 58.299-acre tract in the Johann Zerbach Survey No. 1827, Abstract No. 4217, approximately 19½ miles southwest of San Angelo, Tom Green County, Texas. The tract of land was conveyed to Tom Green County by deed recorded in Volume 212, page 475 and leased to Christoval Independent School District under a 99 year lease as evidenced by Lease Agreement recorded in Volume 838, page 140 of the Deed Records of Tom Green County, Texas.

2. DIVERSION

- a. Diversion: At a point on the perimeter of reservoir authorized by Certificate No. 14-1290 at Latitude 31.180° N, Longitude 100.495° W and also being N 15° 30' W, 2350 feet from the southwest corner of the aforesaid Zerbach survey.
- b. Maximum Diversion Rate: 15.11 cfs (6800 gpm) in combination with the aforesaid certificates.

3. PRIORITY

The time priority of this amendment is July 29, 1914.

4. SPECIAL CONDITIONS

Authorization to divert and use water to irrigate land under this amendment is not appurtenant to the 58.299-acre tract and shall become null and void upon termination of the aforesaid lease agreement, or any extensions thereof.

*This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 14-1290, except as specifically amended herein.*

*This amendment is issued subject to all superior and senior water rights in the Colorado River Basin.*

*Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.*

*Certificate owner shall use those practices, techniques and technologies that will reduce the loss or waste of water and improve the efficiency and use of water so that only so much water as can be beneficially used will be diverted. Furthermore, diversion and use will occur only when reasonably necessary because of prevailing climatic conditions and subject to the terms conditions of this amendment.*

*All other matters requested in the application which are not specifically granted by this amendment are denied.*


*This amendment is issued subject to the Rules of the Texas Water Commission and to the right of continuing supervision of State water resources exercised by the Commission.*

TEXAS WATER COMMISSION

  
John Hall, Chairman

DATE ISSUED: OCT 15 1991

ATTEST:

  
Gloria A. Vasquez, Chief Clerk



CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 14-1290

OWNER: C. L. McMillan  
P. O. Box 3  
Christoval, TX 76935

COUNTY: Tom Green

PRIORITY DATE: July 29, 1914  
and March 12, 1964

WATERCOURSE: South Concho River

BASIN: Colorado River

WHEREAS, by final decree of the 51st District Court of Tom Green County, in Cause No. 44,900-A, In Re: The Adjudication of Water Rights in the Concho River Segment of the Colorado River Basin, dated June 14, 1979, a right was recognized under Certified Filing 291 and Claim 238 authorizing D. R. Spears, et al and Mrs. Clarice Atkins McMillan to appropriate waters of the State of Texas as set forth below;

WHEREAS, by Will dated November 7, 1975, Order Admitting Will to Probate and Authorizing Letters Testamentary dated August 30, 1976, and the Inventory, Appraisement and List of Claims, C. L. McMillan inherited all of Clarice Atkins McMillan's interests in Certified Filing 291 and Claim 238;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Colorado River Basin is issued to C. L. McMillan, subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to maintain an existing dam and reservoir on the South Concho River and impound therein not to exceed 50 acre-feet of water. Point on the dam at the center of the stream is S 85°E, 855 feet from the northwest corner of the J. Zerbach Survey 1827, Abstract 4217, Tom Green County, Texas. This dam and reservoir are also authorized under Certificates of Adjudication 14-1280 through 14-1289, 14-1291 through 14-1303, 14-1314, 14-1403 and 14-1404.

2. USE

A. Owner is authorized to divert and use not to exceed 116.4 acre-feet of water per annum from the aforesaid reservoir on the South Concho River (diversion point 1) to irrigate a maximum of 58 acres of land out of that portion of a 76.25 acre tract located west of the A.T. & S.F.R.R. right-of-way located in the Elizabeth Smith Survey 81, Abstract 4881, and the James Webb Survey 83, Abstract 4007, Tom Green County, Texas, said 76.25 acre tract being described as follows:

- (1) BEGINNING at a point on the East bank of the South Concho River;
- (2) THENCE S 74°45'E, 664 varas to a rock on East bank of an irrigation ditch;
- (3) THENCE S 11°45'W, 180 varas with the East bank of the irrigation ditch to a rock;
- (4) THENCE S 70°30'E, 191 varas to a rock on the West line of San Angelo and Sonora Road;
- (5) THENCE N 35°45'E, 151 varas with the West line of said road to a rock;
- (6) THENCE N, 543 varas to a rock on the South line of the James Webb Survey 83, Abstract 4007;
- (7) THENCE E, 382 varas to a rock on the West line of said road;
- (8) THENCE N 35°15'E, 108.5 varas with the West line of said road to a stake;
- (9) THENCE W, 496 varas to a stake;
- (10) THENCE S 45°W, 95 varas to a stake;
- (11) THENCE W, 795.6 varas to a point on the East bank of the South Concho River;

(12) THENCE upstream with the meanders of the South Concho River to the place of beginning.

B. Owner is authorized to divert and use not to exceed 56 acre-feet of water per annum from the South Concho River (diversion point 2) to irrigate a maximum of 36 acres of land out of that portion of a 76.25 acre tract located west of the A.T. & S.F.R.R. right-of-way, as described above.

### 3. DIVERSION

#### A. Location

(1) At a point on the north bank of the South Concho River which is S 85°E, 855 feet from the northwest corner of the J. Zerbach Survey 1827, Abstract 4217, Tom Green County, Texas. This diversion point is also authorized under Certificates of Adjudication 14-1280 through 14-1289, 14-1291 through 14-1303, 14-1314, 14-1403 and 14-1404.

(2) At a point on the east bank of the South Concho River which is S 20°E, 450 feet from the northwest corner of the Elizabeth Smith Survey 81, Abstract 4881, Tom Green County, Texas.

#### B. Rate:

Maximum diversion rate in combination with other owners of diversion point 1 is 15.11 cfs (6800 gpm).

Maximum diversion rate for diversion point 2 is 4.44 cfs (2000 gpm).

### 4. PRIORITY

The time priority of owner's right is July 29, 1914 for the 116.4 acre-feet of water annually diverted from diversion point 1 and March 12, 1964 for the 56 acre-feet of water annually diverted from diversion point 2.


The locations of pertinent features related to this certificate are shown on Page 11 of the Concho River Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Department of Water Resources and the office of the County Clerk.

This certificate of adjudication is issued subject to all terms, conditions and provisions provided for in the final decree of the 51st District Court of Tom Green County, in Cause No. 44,900-A, In Re: The Adjudication of Water Rights in the Concho River Segment of the Colorado River Basin, dated June 14, 1979, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to the Rules of the Texas Department of Water Resources and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

This water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the above-described land includes, unless otherwise specified, the portion of the water right which is appurtenant to the land transferred.

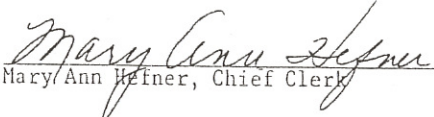
TEXAS WATER COMMISSION

  
Felix McDonald, Chairman

DATE ISSUED:

March 12, 1980

ATTEST:

  
Mary Ann Heffner, Chief Clerk